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#15  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: )  
    **David T. Frederick**     )  
Serial No.: **09/288,685**     )  
Filed:      **April 9, 1999**     )  
Title:      **Medical Cabinet With**  
              **Adjustable Drawers**     )

Art Unit 3651

Patent Examiner  
Jeffrey Shapiro

Board of Patent Appeals and Interferences  
Commissioner for Patents  
Washington, D.C. 20231

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**BRIEF OF APPELLANT PURSUANT TO 37 C.F.R. § 1.192**

Sir:

The Appellant hereby submits the Brief pursuant to 37 C.F.R. § 1.192, in triplicate,  
concerning the above-referenced Application.

**REAL PARTY IN INTEREST**

The Assignee of all right, title and interest to the above-referenced Application is  
Medicorx, Inc., a Delaware corporation.

## **RELATED APPEALS AND INTERFERENCES**

Appellant believes that there are no related appeals or interferences pertaining to this matter.

## **STATUS OF CLAIMS**

Claims 1-56 are pending in the Application.

Claims 3, 7, and 36 were rejected pursuant to 35 U.S.C. § 112, first paragraph.

Claims 1-56 were rejected pursuant to 35 U.S.C. § 112, second paragraph.

Claims 1-12, 14-19, 29-36, 40-48, and 53-56 were rejected pursuant to 35 U.S.C. § 102(b) as being anticipated by Krivec.

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Krivec.

Claims 20-28 and 37-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lipps in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent 5,961,036 in view of Lipps and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent 6,073,843 in view of Lipps and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent 5,957,372 in view of Lipps and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent 5,790,409 in view of Lipps and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-58 of U.S. Patent 6,163,737 in view of Lipps and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent 5,404,384 in view of Higham and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent 5,533,079 in view of Higham and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent 5,971,593 in view of Higham and further in view of Krivec.

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent 5,993,046 in view of Higham and further in view of Krivec.

These rejections were the only rejections present in the Office Action ("Action") dated July 17, 2001. Appellant appeals the rejection of claims 1 through 56, inclusive.

## **STATUS OF AMENDMENTS**

No final rejection has been made. However, claims have been twice rejected. Therefore, no amendments to the claims were requested to be admitted after a final rejection.

### Overview of dates and papers associated with this application

1. 04/09/99 Initial filing
2. 08/17/00 Office Action (first) rejection
3. 11/10/00 Response by Appellant (successfully traversing the rejection)
4. 02/12/01 Office Action first restriction requirement
5. 03/01/01 Response by Appellant (successfully traversing the first restriction)
6. 05/22/01 Office Action second (different) restriction requirement
7. 06/04/01 Response by Appellant (successfully traversing the second restriction)
8. 07/17/01 Office Action (second non final) rejection
9. 10/17/01 Notice of Appeal

## SUMMARY OF INVENTION

### Overview of the Invention

An exemplary embodiment of the present invention is directed to providing a supply or storage cabinet that may have adjustable drawers or shelves. For example, an exemplary embodiment may include a medical cabinet with adjustable drawers.

Figure 57 shows a cabinet (550) including a top (552), a bottom (554), side walls (556, 557), and a back wall (558). The cabinet may have a front opening (567). The side walls (556, 557) may have a plurality of openings or apertures (560) therein. The cabinet (550) may be constructed with a double-wall construction having outer walls (582, 584) overlying the side walls. As shown in Figure 59, a space (586) can extend between the side walls and the outer walls.

The side wall openings (560) include a first series (562) of openings that in this embodiment may be elongated in a horizontal direction and arranged with a predetermined spacing both horizontally and vertically on the interior side walls interior of the cabinet. Series (562) may include one row of openings vertically spaced and aligned adjacent the front opening (567) of the cabinet. Series (562) may also include a second row of vertically aligned and spaced openings adjacent the back wall (558) of the cabinet. It should be understood that other arrangements may be used in alternative embodiments.

The plurality of openings (560) may further include a second series (564) of openings. The openings in the second series may be elongated in a vertical direction. The openings which comprise second series (564) may also be arranged with a predetermined spacing both

horizontally and vertically to complement the first series (562) of openings in the interior walls of the cabinet. Adjacent openings in the first and second series (562, 564) can be generally perpendicular slots that may form an L-shape as shown in Figures 57 and 58. Each pair of adjacent openings from the first series and the second series may comprise a set (588) as shown in Figure 58. A pair of complementary sets may comprise an arrangement (590) as shown in Figure 57 by a dashed line. The plurality of arrangements (590) may be spaced in each side wall (556, 557) to complement each other and be arranged to be at generally the same vertical elevation. It should again be understood that other arrangements may be used in alternative embodiments.

In the exemplary embodiment each arrangement of apertures may be adapted to engage releasable connective members such as a bracket (566) as shown in Figure 56. A bracket (566) may be attached in operative connection with an item supporting member such as a drawer guide (574) as shown in phantom in Figure 56. Bracket (566) may be a substantially flat elongated member and have a tab or projection (568) at each end. The tabs (568) may extend outwards from one side of the bracket in a first direction. The tabs may also extend substantially at a right angle to the main body of the bracket. Bracket (566) may further include finger projections (570) that may extend adjacent an upper edge and adjacent each longitudinal end.

As shown in Figure 59 the projections (570) may be bent in an S-shape and extend in the first direction like the tabs (568). The projections (570) may include an inner portion (592) which extends in generally the first direction. The inner portion (592) may extend generally horizontally through a corresponding horizontally elongated aperture (594). The projection (570)

may also include an end portion (596). The end portion (596) may extend generally transverse of the first direction and away from tab projection (568). In this way when the bracket (566) is in an operative position, the end portion (596) may extend generally vertically in the space (586) between the interior side wall (557) and the outer wall (584). The end portion (596) can secure the bracket (566) to prevent horizontal movement thereof when the bracket is in the operative position.

The installation of the bracket (566) in operative supporting connection with the wall (557) may be accomplished by first extending the end portion (596) in a generally horizontal direction and passing it through an aperture (594). Once the end portion passes through the aperture the bracket (566) may be rotated such that the end portion (596) moves toward the vertical position and inner portion (592) of finger projection (570) extends in the aperture (594). As the bracket (566) is rotated, the tab projection (568) may be moved to extend into an aperture (598) which may be part of a set with the aperture (594). The engagement of tab projection (568) in aperture (598) can provide vertical support for the bracket (566).

In the embodiment shown the bracket (566) may include two finger projections (570) and a pair of tab projections (568). An item supporting member such as a drawer or shelf, may be extended across the interior area of the cabinet in engagement with the brackets. The positioning of a drawer or shelf in this manner can help to secure and maintain the brackets in engagement with the sidewall. With the adjacent drawer or shelf removed, the brackets may also be readily disengaged and re-positioned in other apertures. This enables readily installing and/or changing the positions, arrangement and types of shelves and drawers within the cabinet.

## **CONCISE STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

The questions presented in this appeal are:

- 1). Whether Appellant's claims 3, 7, and 36 are unpatentable under 35 U.S.C. § 112, first paragraph.
- 2). Whether Appellant's claims 1-56 are unpatentable under 35 U.S.C. § 112, second paragraph.
- 3). Whether Appellant's claims 1-12, 14-19, 29-36, 40-48, and 53-56 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by Krivec.
- 4). Whether Appellant's claim 13 is unpatentable under 35 U.S.C. § 103(a) over Krivec.
- 5). Whether Appellant's claims 20-28 and 37-39 are unpatentable under 35 U.S.C. § 103(a) over Lipps in view of Krivec.
- 6). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent 5,961,036 in view of Lipps and further in view of Krivec.
- 7). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent 6,073,843 in view of Lipps and further in view of Krivec.
- 8). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent 5,957,372 in view of Lipps and further in view of Krivec.

- 9). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent 5,790,409 in view of Lipps and further in view of Krivec.
- 10). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-58 of U.S. Patent 6,163,737 in view of Lipps and further in view of Krivec.
- 11). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent 5,404,384 in view of Higham and further in view of Krivec.
- 12). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent 5,533,079 in view of Higham and further in view of Krivec.
- 13). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent 5,971,593 in view of Higham and further in view of Krivec.
- 14). Whether Appellant's claims 1-56 are unpatentable under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent 5,993,046 in view of Higham and further in view of Krivec.

## **GROUPING OF CLAIMS**

No groups of claims stand or fall together. Each of Appellant's claims 1-56 recite at least one element, combination of elements, or step not found or suggested in the applied references, which patentably distinguishes the claims.

Every claim recites additional features of the invention which patentably distinguishes the claim over every other pending claim.

The pending claims include six independent claims (claims 1, 29, 40, 41, 44, and 53). Claims 2-28 depend from claim 40. Claims 30-39 and 42-43 depend from claim 41. Claims 45-52 depend from claim 44. Claims 54-56 depend from claim 53. All pending claims are reproduced in the Appendix.

## **ARGUMENT**

### The Applicable Legal Standards

Anticipation pursuant to 35 U.S.C. § 102(b) requires that a single prior art reference contain all the elements of the claimed invention arranged in the manner recited in the claim.

*Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Anticipation under 35 U.S.C. § 102(b) requires in a single prior art disclosure, each and every element of the claimed invention arranged in a manner such that the reference would literally infringe the claims at issue if made later in time. *Lewmar Marine, Inc. v. Barient, Inc.*, 822 F.2d 744, 747, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987).

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie obviousness*. To establish prima facie obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. MPEP § 2142.

Even if all of the features recited in the claim are known in the prior art, it is still not proper to reject a claim on the basis of obviousness unless there is a specific teaching, suggestion, or motivation in the prior art to produce the claimed combination. *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The teaching, suggestion, or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembiczaik*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

If the Office does not produce a *prima facie* case, then the Appellant is under no obligation to submit evidence of nonobviousness (MPEP § 2142).

It is respectfully submitted that the Action from which this appeal is taken does not meet these burdens.

### The Krivec Reference

Krivec is directed to a drawer slide interlock apparatus. The apparatus includes a cabinet assembly (10) having an outer shell (12) with a pair of side walls (14) (Figure 1). Drawers (16), each having side walls (17), are supported on a pair of drawer slide assemblies (18, 20). As shown in Figure 7, a drawer slide assembly (18) includes a drawer-side member (22), a cabinet-side member (24), and an intermediate member (26). A drawer-side member (22) is attached to a drawer side wall (17) and a cabinet-side member (24) is attached to a cabinet side wall (14). They are attached by substantially identical means. The intermediate member (26) is slidable relative to both the drawer-side member (22) and the cabinet-side member (24), aided by ball bearings (36).

The drawer-side member (22) has three male interlock members (48A, 48B, 48C) that are received by three respective rectangular apertures (60A, 60B, 60C) in a drawer side wall (17). The male interlock members (48A, 48B) have an axis parallel to the height of the drawer-side member (22), whereas male interlock member (48C) has an axis perpendicular to the height.

The drawer-side member (22) is attached to the side wall (17) by inserting the male interlock member (48C) through aperture (60C). The drawer-side member (22) is then moved sideways (in the direction of arrow A in Figure 4) until surface (59) contacts the aperture surface (62C). The other male interlock members (48A, 48B) are then inserted through apertures (60A, 60B) and the drawer-side member (22) is then moved upward (in the direction of arrow B in Figure 4) until the surfaces (59) contact the wall surfaces (63A, 63B). The weight of the drawer (16) maintains the contact between surfaces. A screw (72) is inserted through the drawer-side

member (22) (apparently through hole 74) and into the side wall (17) to maintain the drawer-side member (22) in proper position and to prevent disengagement (col. 4, lines 30-35).

The cabinet-side member (24) includes three male interlock members (148A, 148B, 148C) and is attached to a side wall (14) of the outer shell (12) in a manner nearly identical to the manner in which the drawer-side member (22) is attached to the side wall (17) of the drawer (16). As shown in Figure 7, the side wall (14) supports the cabinet-side member (24) which, in turn, through the intermediate member (26) supports the drawer-side member (22), which supports the drawer (16).

#### The Lipps Reference

Lipps is directed to methods for dispensing items. Lipps shows a dispensing unit (10) including a cabinet (12) with shelves (20) and doors (28). The dispensing unit also includes a processor (33) with a key lock (58) on the face thereof (col. 6, lines 35-49) for switching modes (e.g., dispensing, restocking).

Upon selection of a desired item from a list of items held by the unit, a visual indicator (46) corresponding to the selected item can be actuated so that the selected item can be quickly located (col. 5, lines 56-67). The unit also includes touch-activated item switches (42) connected to the processor so that a user can input records of removed items into the processor.

### **The Higham Reference**

Higham is directed to dispensing items from a dispensing unit (10, 28). The unit comprises a processor (22) and an enclosure (12) having drawers (32) which are lockable. The drawers can include bins (216) for holding the items (col. 24, lines 48-60; Figure 11). The bins have lids (218) equipped with a sensor that communicate with the processor to indicate when a lid is lifted (col. 25, lines 58-66). The processor includes a record of the items held within each drawer and which items may be accessed by specific users.

### **The Nine U.S. Patents**

Only the subject matter claimed in the U.S. patents referred to in the obviousness-type double patenting rejections may be considered. The entire disclosures of these U.S. patents may not be used as the basis for such a rejection. The subject matter in each patent's claims is self evident.

#### **(i) 35 U.S.C. § 112, First Paragraph**

Claims 3, 7, and 36 were rejected under 35 U.S.C. § 112, first paragraph, as non-enabling. These rejections are respectfully traversed.

The Action apparently basis the rejection on claim 7 allegedly containing the language a "second outer wall having corresponding apertures to the first, inner wall." However, neither the language "second outer wall" nor "first inner wall" appear in claim 7 (nor claims 3 or 36). Therefore, the rejection is without basis and should be withdrawn.

In an exemplary embodiment, the "first wall" and "second wall" of claim 7 may relate to the walls (556, 557) shown in Figure 57. Note Specification page 73, line 15 to page 75, line 10. Furthermore, a plurality of arrangements (590) of apertures may be spaced in each side wall (556, 557) to complement each other and be arranged to be at generally the same vertical elevation (Specification page 75, lines 6-8). Thus, the subject matter of claim 7 has support and description in the Specification.

Claims 3 and 36 refer to an "outer wall." As the Action has correctly indicated, this language finds support and description in the Specification at least at page 74, lines 1-3 and at page 76, lines 3-5.

The Appellant respectfully submits that the recited subject matter finds full support and enablement in the Specification. Thus, the 35 U.S.C. § 112, first paragraph, rejections are not appropriate and should be withdrawn.

## **(ii) 35 U.S.C. § 112, Second Paragraph**

Claims 1-56 were rejected under 35 U.S.C. § 112, second paragraph, on the grounds of multiplicity and prolix. These rejections are respectfully traversed.

As indicated in the "Overview of dates and papers associated with this application", the Office presented three previous Actions (i.e., a first rejection; a first restriction; and a second different restriction) prior to the Action from which this appeal was taken. Yet in the Action the Office first alleges multiplicity and prolix. It is ironic that the same claims which the Office

previously twice held to restriction requirements because of their alleged differences, are now held to multiplicity because of their alleged commonality.

Appellant was required (Action page 4) by the Office to choose one of only two choices, either (1) a total of ten claims including up to four independent claims; or (2) a total of twenty claims including up to two independent claims. Appellant provisionally elected (in the Notice of Appeal) with traverse the choice (1), at least a total of ten claims including up to four independent claims, including claims 4, 16, 17, 36, 40, 41, 44, 53, 54, 56.

Appellant traverses the rejections on the basis that the Office has no authority to limit Appellant to the two choices. Nor has the Office provided any legal basis for the two choices. Upon payment of the basic filing fee (which has been paid along with other fees for additional claims) Appellant was entitled to twenty claims, including three independent claims (which amount and type of claims was greater than that presented in the two choices). Furthermore, the Action has presented no authority for distinguishing independent claims from dependent claims in selecting the total number of claims. Nor is there any indication that the Office is confused by the presentation of claims in this case or that the public will be. *In re Flint*, 162 USPQ 228, 231 (CCPA 1969). Nor has any valid reason been provided that the invention is obscured by the number of claims. Especially when the claims were clear enough for the Examiner to apply a previous examination on the merits, two different restriction requirements, and the present reference-based rejections against all of the claims. *In re Wakefield*, 164 USPQ 636, 639 (CCPA 1970). Additionally, the completed full examination of all claims is evidence that no serious burden was placed on the Office. It follows that all of the pending claims are definite and meet

the requirements of 35 U.S.C. § 112, second paragraph. Thus, Appellant respectfully submits that the rejections are without basis and should be withdrawn.

Nor has the Office shown that each and every one (or any) of the fifty-six claims contain long recitations or unimportant details which hide or obscure the invention. That is the Office has not presented evidence of any prolix. For example, the Action has not stated the exact language in independent claims 1, 29, 40, 41, 44, and 53 which renders these claims prolix. That is, what exact language in these claims renders these claims prolix?

The Action's examples are severely lacking. Of the fifty-six claims the Action only briefly mentions claims 3, 8, 13, 14, 15, and 36. As an example, the Action indicates that claim 8 contains "an item supporting member moveably mounted in supporting connection with the first and second connecting members, wherein the supporting member is generally movable horizontally." Appellant fails to see how this language renders the claim prolix or may be the basis for a multiplicity rejection. This claim 8 language further patentably distinguishes the claim by reciting that an item supporting member is "moveably mounted" as opposed, for example, to fixedly mounted. Furthermore, the item supporting member is "generally movable horizontally" as opposed to not being capable of being generally movable horizontally or stationary. The language "moveably mounted" is not the same as the language "generally movable horizontally." The claim language is not repetitious.

As another example the Action indicates that claim 13 contains "apertures in first and second arrangements." Again, Appellant fails to see how this language renders the claim prolix or may be the basis of a multiplicity rejection. The claim 13 language further patentably

distinguishes the claim by reciting that the first and second arrangements of apertures are spaced from one another by a second vertical distance, wherein the second vertical distance is smaller than the first vertical distance. Thus, the "apertures are spaced" a "second vertical distance" which "is smaller than the first vertical distance" as opposed to a different (e.g., larger) distance. Nor is the claim language repetitious.

As another example the Action indicates that claims 14 and 15 recite that "the apertures are elongated." Again, Appellant fails to see how this language warrants a prolix or multiplicity rejection. The claim 14 language further patentably distinguishes the claim by reciting that a first aperture in a set is elongated generally horizontally, and in the operative position of the connecting member the elongated first projection extends into and substantially fills the generally horizontally elongated first aperture. The claim 15 language further patentably distinguishes the claim by reciting that a second aperture in a set is elongated generally vertically, and in the operative position of the connecting member a second projection extends in and substantially fills the vertically elongated aperture. That is, a first aperture is elongated generally "horizontally" and a second aperture is elongated generally "vertically." This is significantly different from the Action's mere allegation that "the apertures are elongated." Nor is the claim language repetitious.

As another example the Action alleges that each of the claims 3 and 36 "appears to claim the same thing." This is a perfect example of the baseless nature of the Action's prolix and multiplicity rejections. First, the Action states that each of the claims "appears" to claim the same thing. That is, the rejection is not conclusive. Secondly, it should be easily understood and

recognized that claim 3 depends from independent claim 40, and that claim 36 depends from independent claim 41. Clearly, claim 40 and claim 41 are not the same claim, i.e., they are patentably distinguishable. It follows that claim 3 and claim 36 cannot claim "the same thing" as the Action erroneously alleges.

The Action further alleges that "Subsequent claims describe versions of these claims, but using different wording with apparently convoluted and unnecessarily complex recitation." The Appellant disagrees. Nor has the Office presented one iota of valid evidence to substantiate such an allegation. Every claim recites additional features of the invention which patentably distinguishes the claim over every other pending claim. The claims are of varying scope, to which Appellant is entitled.

The Action also states that "the claims should not describe the invention in such detail as to obscure the patentable subject matter of the invention." Amazingly, this statement is in direct conflict with the requirements of 35 U.S.C. § 112, second paragraph, which requires Appellant to particularly point out and distinctly claim the subject matter. Furthermore, Appellant's recited invention is presumably not considered by the Office to be complicated subject matter, especially in view of the complete description provided in the Specification. Thus, the Action's allegations of multiplicity and prolix are highly unusual and unclear.

The Action also attempts to guess the number of claims to which Appellant is allegedly entitled by considering the number of claims in the "cited references." That is, the Examiner has rejected the present application based the number of claims in other (unrelated) applications. However, Appellant respectfully submits that the number of claims in "cited references" is

irrelevant. Nor does the Examiner have any authority for basing such a rejection. The present application, for which Appellant has paid all necessary fees, is required by the statutes, rules, and Office procedures to be examined independently of other applications and on its own merits.

Additionally, Appellant asserts that the claims in the "cited references" do not average out to the number of independent and total claims as calculated by the Examiner. Furthermore, it is noted that Fedor et al (US 6,163,737), being a cited reference, includes seven (7) independent claims and fifty-eight (58) total claims. Thus, the amount and type of claims in the Fedor reference (which issued December 19, 2000) is evidence that the 35 U.S.C. § 112, second paragraph, rejections are arbitrary and capricious.

The Action's allegations are also further examples of the unclear, confusing, and unsupported prolix and multiplicity rejections that have been presented to Appellant without regard to the statutes, rules, or Office procedures. The Action is defective.

As shown, claims 1-56 meet the requirements of 35 U.S.C. § 112, second paragraph, and are not indefinite on the grounds of multiplicity or prolix. Appellant respectfully submits that the 35 U.S.C. § 112, second paragraph, rejections are not appropriate and should be withdrawn.

### **(iii) 35 U.S.C. § 102**

Appellant's arguments against the prior art rejections are based on the Office's interpretation of the Krivec reference as indicated and applied in the Action. Therefore, it is respectfully submitted that any other interpretation of the reference by the Office would constitute a new grounds of rejection.

For brevity the Appellant has not necessarily presented all of the reasons as to why the Krivec reference does not anticipate the claims. Nevertheless, Appellant's arguments show that the applied reference does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the rejection. Therefore, the Krivec reference cannot anticipate the claims. Hence, Appellant's claims patentably distinguish over the applied reference. Thus, Appellant respectfully submits that the 35 U.S.C. § 102(b) rejections should be withdrawn.

#### **The Pending Claims Are Not Anticipated By Krivec**

In the Action claims 1-12, 14-19, 29-36, 40-48, and 53-56 were rejected under 35 U.S.C. § 102(b) as being anticipated by Krivec. These rejections are respectfully traversed.

Appellant traverses these rejections on the grounds that the Krivec reference does not contain all the features and relationships of the claimed invention arranged in the manner recited in the claims. Krivec lacks many of the recited features and relationships. The features recited in Appellant's claims patentably distinguish over the Krivec reference.

The Action alleges, with regard to claims 1, 29-36, 40-48, and 43-56, that Krivec anticipates the claims (including all independent claims) by teaching a supporting structure (12); wall (14); first aperture (166a or 166b); second aperture (166c); connecting member (22); projecting portions (48a-c); first projection (55a or 55b); second projection (55c); and inner portion (59). The Appellant respectfully disagrees.

### **The Independent Claims Are Not Anticipated By Krivec**

Appellant herein shows that the independent claims 1, 29, 40, 41, 44, and 53 are not anticipated by Krivec. It follows that the claims which depend from these independent claims are likewise allowable.

#### **Claim 1**

Claim 1 is an independent claim directed to an apparatus. Krivec does not disclose at least the features:

- (A) • the releasable connecting member includes two disposed pairs of projecting portions.
- (B) • in the operative position of the connecting member the first projection extends in a first wall aperture and the second projection extends in a second wall aperture.
- (C) • a supporting structure including a generally vertically extending wall including at least two sets of generally horizontally disposed apertures therein, wherein each set of apertures includes a first aperture and a second aperture, wherein the first aperture is disposed vertically above the second aperture.
- (D) • a releasable connecting member.
- (E) • rotating the connecting member relative to the wall to the operative position.

#### **Krivec does not disclose feature (A)**

The Action (page 6, line 3) alleges that Krivec discloses a connecting member (22). The Action (page 6, lines 9-10) also alleges that Krivec discloses that the "connecting member includes two disposed pairs of projecting portions (48a-c)." That is, the Action alleges that

Krivec teaches that a connecting member (22) includes "two disposed pairs" of projecting portions (48a-c).

Krivec specifically discloses that the drawer-side member (22) has only three male interlock members (48A, 48B, 48C) and that they are respectively received by only three rectangular apertures (60A, 60B, 60C) (col. 3, lines 44-45; col. 4, lines 1-3). However, the claim recites "two disposed pairs." It is unclear how only three alleged projecting portions (48a, 48b, 48c) can constitute the recited two pairs (i.e., at least four) of projecting portions. That is, three does not qualify as four. Thus, Krivec cannot anticipate the claim.

Krivec does not disclose feature (B)

The Action (page 6, lines 15-17) alleges that Krivec discloses that a "first projection extends in a first aperture and the second projection extends in a second aperture." The Action alleges that Krivec teaches a first aperture (166A or 166B), second aperture (166C), a connecting member (22), first projections (55A or 55B), and second projections (55C). That is, the Action alleges that Krivec teaches a connecting member (22) including first projections (55A or 55B) and second projections (55C), and that a first projection (55A or 55B) extends in a first aperture (166A or 166B) and a second projection (55C) extends in a second aperture (166C) of wall (14).

The claim recites that the wall includes the first aperture and the second aperture. However, it is not possible in Krivec for the alleged first projection (55A or 55B) to extend in a first wall aperture (166A or 166B), or for the alleged second projection (55C) to extend in a second wall aperture (166C). The alleged projections (55A, 55B, 55C) are associated with the

drawer (16), not the wall (14). Note Krivec's Figures 1 and 7. Thus, Krivec cannot anticipate the claim.

Krivec does not disclose feature (C)

Krinec does not disclose a supporting structure including a generally vertically extending wall including at least two sets of generally horizontally disposed apertures therein, wherein each set of apertures includes a first aperture and a second aperture, wherein the first aperture is disposed vertically above the second aperture. Nor does Krivec disclose (note feature (B)) that a releasable connecting member includes two disposed pairs of projecting portions corresponding to the sets of apertures, and wherein each pair of projecting portions includes a first projection and a second projection, and wherein in the operative position of the connecting member, the first projection extends in a first aperture and the second projection extends in a second aperture.

That is, Krivec does not teach sets of generally horizontally disposed apertures in a wall, wherein each set of apertures includes a first aperture and a second aperture, wherein the first aperture is disposed vertically above the second aperture. It follows that Krivec does not teach a releasable connecting member including two disposed pairs of projecting portions corresponding to the generally horizontally disposed and vertically disposed apertures in a wall. Where does Krivec disclose sets of generally horizontally disposed apertures (i.e., at least four apertures) in a wall, where these wall apertures are able to correspond with two disposed pairs (i.e., at least four) of projecting portions of a releasable connecting member? Where does Krivec disclose a connecting member having a first projection extending in a first aperture and a second projection

extending in a second aperture, where the first aperture is disposed vertically above the second aperture? It doesn't. Thus, Krivec cannot anticipate the claim.

Krivec does not disclose feature (D)

The Action (page 6, line 3) alleges that Krivec discloses a releasable connecting member (22). However, a screw (72) is inserted through Krivec's member (22) (apparently through hole 74) and into the side wall (17) to fasten the member (22) in proper position and "to prevent disengagement" (col. 4, lines 30-35). Krivec states that the fastening item is a screw, not a bolt. There is no indication that Krivec's fastening screw (or the created hole/thread in the wall) is reusable, especially in light of Krivec's desire "to prevent disengagement." Thus, Krivec's member (22) cannot constitute a "releasable connecting member" as alleged. Thus, Krivec cannot anticipate the claim.

Krivec does not disclose feature (E)

Krivec does not disclose that a connecting member can be placed in supporting connection with a wall by extending end portions of first projections in first apertures of sets, and then rotating the connecting member relative to the wall to the operative position such that inner portions extend in the first apertures and the second projections extend in second apertures.

Krivec describes connecting drawer-side member (22) to a side wall (17) beginning at col. 4, line 11. During the connection Krivec's drawer-side member (22) is moved in the direction of arrow A (Figure 4) and then moved in the direction of arrow B (Figure 4). Krivec does not disclose rotating. Nor does Krivec disclose a structure adapted to permit supporting connection by rotation. Thus, Krivec cannot anticipate the claim.

As shown by Appellant, Krivec does not disclose each and every element of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. Hence, Appellant's claim patentably distinguishes over the Krivec reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection should be withdrawn.

**Claim 29**

Claim 29 is an independent claim directed to an apparatus. Appellant's remarks concerning the Krivec reference discussed above in support of the patentability of claim 1 are incorporated by reference as if fully rewritten herein. Krivec does not disclose (at least) the features:

- a pair of brackets, each bracket includes a substantially flat elongated member having a tab portion adjacent each longitudinal end, the tab portions extending in a first direction, wherein the elongated member further includes a finger portion adjacent an upper edge thereof, wherein the finger portion extends generally transverse to the first direction.

Krivec discloses a drawer-side member (22) with three male interlock members (48A, 48B, 48C) (Figure 3). Krivec indicates (col. 3, lines 44-49) that the members (48A, 48B) are identical and have an axis that is parallel with the height of the drawer-side member (22), and the member (48C) has an axis perpendicular to the height of the drawer-side member (22). That is, member (48C) extends in a direction different from that of members (48A, 48B).

Therefore, Krivec does not have a tab portion adjacent each longitudinal end where these tab portions extend in a first direction. Krivec's members (48A, 48B), although identical, are not

at the ends (Figure 3). Krivec's members (48A, 48C), although at the ends, do not extend in the same (first) direction.

Krivec also does not teach that an elongated member includes a finger portion adjacent an upper edge thereof, wherein the finger portion extends generally transverse to the first direction.

Where does Krivec teach a finger portion adjacent an upper edge? Krivec's member (48C) cannot constitute both a tab portion and a finger portion. Actually, Krivec's member (48C) cannot constitute either a tab portion or a finger portion. Krivec cannot anticipate the claim.

As shown by Appellant, Krivec does not disclose each and every element of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. Hence, Appellant's claim patentably distinguishes over the Krivec reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection should be withdrawn.

#### **Claim 40**

Claim 40 is an independent claim directed to an apparatus. Appellant's remarks concerning the Krivec reference discussed above in support of the patentability of claim 1 are incorporated by reference as if fully rewritten herein. Krivec does not disclose (at least) the features:

- (A) • the releasable connecting member includes two disposed pairs of projecting portions.
- (B) • in the operative position of the connecting member each respective first projection extends in a respective first aperture and each respective second projection extends in a respective second aperture.

- (C) • a supporting structure including a generally vertically extending wall including at least two sets of apertures, wherein a pair of sets are disposed generally horizontally, wherein each set includes a first aperture and a second aperture, wherein each set includes the first aperture disposed vertically from the second aperture.
- (D) • a releasable connecting member.
- (E) • the connecting member is placed in supporting connection with the wall by extending each respective end portion in a respective first aperture, and by extending each respective second projection in a respective second aperture to engage the connecting member with the wall.

As previously shown by Appellant, Krivec does not disclose each and every element of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. Krivec cannot anticipate the claim. Hence, Appellant's claim patentably distinguishes over the Krivec reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection should be withdrawn.

#### **Claim 41**

Claim 41 is an independent claim directed to an apparatus. Appellant's remarks concerning the Krivec reference discussed above in support of the patentability of claim 29 are incorporated by reference as if fully rewritten herein. Krivec does not disclose (at least) the features:

- a pair of brackets, each bracket includes a substantially flat elongated member having a tab portion adjacent each longitudinal end, the tab portions extending in a first direction, the elongated member further includes finger portions adjacent an edge thereof, wherein the finger portions each include a projection, wherein the finger portion projections extend generally transverse to the first direction.

Krivec does not disclose each bracket including a tab portion adjacent each longitudinal end, and finger portions adjacent an edge. That is, Krivec does not teach a bracket having both tab portions and finger portions (i.e., at least four extending portions). As previously discussed, Krivec has only three projecting portions (48A, 48B, 48C).

Nor does Krivec disclose having finger portion projections extend generally transverse to a direction that tab portions extend.

Nor does Krivec disclose finger portions adjacent an edge of an elongated member.

Krivec's members (48A, 48B, 48C) cannot constitute the recited tab portions and finger portions. Nor can Krivec anticipate the claim.

As shown by Appellant, Krivec does not disclose each and every element of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. Hence, Appellant's claim patentably distinguishes over the Krivec reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection should be withdrawn.

#### **Claim 44**

Claim 44 is an independent claim directed to an apparatus. Krivec does not disclose (at least) the features:

- a plurality of supports, each support releasibly simultaneously engageable with at least one first pair aperture and at least one second pair aperture.
- each support being releasibly engageable.

Each side wall includes therein a plurality of first pairs of apertures and a plurality of second pairs of apertures. The apertures in each first pair being disposed from and aligned with one another in a horizontal direction, and the apertures in each second pair being disposed from and aligned with one another in the horizontal direction. Each aperture in each first pair is vertically disposed from and aligned with at least one aperture in another first pair, and each aperture in each second pair is vertically disposed from and aligned with at least one aperture in another second pair.

Krivec does not disclose a support releasibly simultaneously engageable with at least one first pair aperture (wherein the apertures in each first pair are disposed from and aligned with one another in a horizontal direction) and at least one second pair aperture (wherein the apertures in each second pair are disposed from and aligned with one another in the horizontal direction). As previously discussed, Krivec has only three projecting portions (48A, 48B, 48C). Krivec does not disclose a support that is capable of simultaneously engaging both a first horizontal pair aperture and a second horizontal pair aperture. Nor is Krivec structurally capable of tilting the drawer-side member (22) to simultaneously engage different (vertically disposed) rows of apertures (166). Thus, Krivec cannot have the drawer-side member (22) engage a first pair aperture and a second pair aperture in the manner recited. Hence, Krivec cannot anticipate the claim.

Nor does Krivec disclose that each support is releasably engageable. As previously discussed, the Action (page 6, line 3) alleges that Krivec discloses a releasable connecting member (22). However, a screw (72) is inserted through Krivec's member (22) (apparently through hole 74) and into the side wall (17) to fasten the member (22) in proper position and to "prevent disengagement" (col. 4, lines 30-35). Krivec states that the fastening item is a screw, not a bolt. There is no indication that Krivec's fastening screw (or the created thread in the wall) is reusable, especially in light of Krivec's desire to "prevent disengagement." Thus, Krivec's member (22) cannot constitute a support that is "releasably engageable" as alleged. Thus, Krivec cannot anticipate the claim.

As shown by Appellant, Krivec does not disclose each and every element of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. Hence, Appellant's claim patentably distinguishes over the Krivec reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection should be withdrawn.

### **Claim 53**

Claim 53 is an independent claim directed to an apparatus. Krivec does not disclose (at least) the features:

- each medical item supporting structure is releasably supported in the interior area in supporting connection with both of the side walls through engagement of a plurality of the projections and apertures.

Krivec does not disclose medical item supporting structures each releasably supported in supporting connection with both side walls of a cabinet through engagement of a plurality of

projections and apertures in the manner recited. Nor, as previously discussed, does Krivec disclose having a supporting structure "releasibly supported", especially in light of Krivec's desire to "prevent disengagement." Nor does Krivec disclose medical item supporting structures. Thus, Krivec cannot anticipate the claim. Appellant respectfully submits that the 35 U.S.C. § 102(b) rejection should be withdrawn.

**The Dependent Claims Are Not Anticipated By Krivec**

Each of the dependent claims 2-12, 14-19, 30-36, 42-43, 45-48, and 54-56 depend directly or indirectly from an independent claim. Each independent claim has been previously shown not to be anticipated by Krivec, and thus allowable. It is asserted that the dependent claims are allowable on the same basis.

Furthermore, each of the dependent claims additionally recites specific features and/or relationships that patentably distinguish the claimed invention over Krivec. The Action has failed to establish that the features and relationships recited in the claims are disclosed in the Krivec reference. Krivec does not anticipate the claims. It is respectfully submitted that the 35 U.S.C. § 102(b) rejections should be withdrawn.

**Claim 2**

Claim 2 depends from claim 40. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose that in the operative position of a connecting member, an end portion and a body extend on opposed sides of a vertically extending wall in the manner recited. Thus, Krivec cannot anticipate the claim.

### **Claim 3**

Claim 3 depends from claim 2. Krivec does not disclose an outer wall. Nor does Krivec disclose that an end portion extends in the space between the vertically extending wall and the outer wall.

The Action apparently alleges that a wall of a room constitutes the recited outer wall. However, the Action itself admits that Krivec would not work if the cabinet was flush with the room wall. Thus, a room wall cannot constitute the outer wall. Furthermore, the claim recites that it is the "apparatus" that is "further comprising an outer wall." Additionally, the claim recites that the outer wall is in operatively fixed connection with the vertically extending wall. Thus, Krivec does not disclose the recited outer wall. Nor does Krivec anticipate the claim.

### **Claim 4**

Claim 4 depends from claim 40. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose that the connecting member is selectively vertically positionable relative to the vertically extending wall to engage any one of the arrangements of apertures. As previously discussed, Krivec does not have a releasable connecting member, especially in light of Krivec's desire to "prevent disengagement." It is unclear how Krivec can have a selectively vertically positionable connecting member. Nor does Krivec disclose a connecting member capable of engaging any one of the arrangements of apertures. Thus, Krivec cannot anticipate the claim.

**Claim 5**

Claim 5 depends from claim 40. Krivec does not disclose a moveable item supporting member in the manner recited. Hence, Krivec cannot anticipate the claim.

**Claim 6**

Claim 6 depends from claim 5. Krivec does not disclose the previously recited structure. It follows that Krivec cannot disclose the recited movable item supporting member.

**Claim 7**

Claim 7 depends from claim 4. Krivec does not disclose the recited structure and relationships of a first wall, second wall, corresponding arrangements of apertures, first connecting member, second connecting member, and item supporting member. Thus, Krivec cannot anticipate the claim.

**Claim 8**

Claim 8 depends from claim 7. The Action is silent as to where Krivec teaches the recited features. Again, Krivec does not disclose the previously recited structure. It follows that Krivec cannot disclose the recited movable item supporting member.

**Claim 9**

Claim 9 depends from claim 8. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose a plurality of item supporting members, each independently moveably mounted. Hence, Krivec does not anticipate the claim.

### **Claim 10**

Claim 10 depends from claim 8. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose an item supporting member in the manner recited. Nor can Krivec anticipate the claim.

### **Claim 11**

Claim 11 depends from claim 8. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose a shelf in the manner recited. Nor can Krivec anticipate the claim. The Action refers to a dictionary, but it does not appear that the relied upon dictionary (and definition) has been made of record. Nevertheless, Krivec's member (16) does not fall within the stated definition.

Furthermore, the Action refers to "art-known equivalents." Apparently, the Office is confusing anticipation with obviousness. However, the rejection is not based on an allegation of obviousness.

Additionally, the Action cannot allege that Krivec's same member (16) constitutes both a drawer (claim 10) and a shelf (claim 11). Thus, Krivec does not anticipate the claim.

### **Claim 12**

Claim 12 depends from claim 9. The Action is silent as to where Krivec teaches the recited features. As previously discussed, Krivec does not disclose the first and second arrangements of apertures. It follows that Krivec cannot disclose the recited vertically spaced supporting members. Therefore, Krivec cannot anticipate the claim.

### **Claim 14**

Claim 14 depends from claim 40. As previously discussed, Krivec does not disclose the recited sets of apertures. Each set includes a first aperture disposed vertically from a second aperture (claim 40). It follows that Krivec cannot disclose that an aperture in a set is elongated generally horizontally. The alleged aperture (166C) does not constitute an aperture in a set that is elongated generally horizontally. It further follows that Krivec does not disclose that an elongated projection extends into and substantially fills the generally horizontally elongated aperture. Thus, Krivec does not anticipate the claim.

### **Claim 15**

Claim 15 depends from claim 40. The Action is silent as to where Krivec teaches the recited features. As previously discussed, Krivec does not disclose the recited sets of apertures. Each set includes a first aperture disposed vertically from a second aperture (claim 40). It follows that Krivec cannot disclose that an aperture in a set is elongated generally vertically. It further follows that Krivec does not disclose that a projection extends in and substantially fills the generally vertically elongated aperture. Thus, Krivec does not anticipate the claim.

### **Claim 16**

Claim 16 depends from claim 40. The Action is silent as to where Krivec teaches the recited features. As previously discussed, Krivec does not disclose the recited sets of apertures. Each set includes a first aperture disposed vertically from a second aperture (claim 40). Krivec does not disclose that the first aperture in each of the sets is elongated generally horizontally and the second aperture in each of the sets is elongated generally vertically. It further follows that

Krivec does not disclose that the first and second projections are configured to respectively extend in and substantially fill the first and second apertures. Thus, Krivec cannot anticipate the claim.

#### **Claim 17**

Claim 17 depends from claim 40. The Action is silent as to where Krivec teaches the recited features. As previously discussed, Krivec does not disclose the recited sets of apertures. Each set includes a first aperture disposed vertically from a second aperture (claim 40). Each set further includes the second aperture disposed horizontally from a first aperture (claim 17). Krivec does not disclose the recited sets of vertically and horizontally apertures. Nor can Krivec anticipate the claim.

#### **Claim 18**

Claim 18 depends from claim 17. The Action is silent as to where Krivec teaches the recited features. As previously discussed, Krivec does not disclose the recited pair of sets of apertures. Each set includes a first aperture disposed vertically from a second aperture (claim 40). Each set further includes the second aperture disposed horizontally from a first aperture (claim 17). Furthermore, the second apertures in the pair of sets are spaced further apart horizontally than the first apertures in the pair of sets. Krivec does not disclose the recited apertures. Krivec cannot anticipate the claim.

#### **Claim 19**

Claim 19 depends from claim 7. The Action is silent as to where Krivec teaches the recited features. However, the Action (on page 6) alleges that Krivec discloses a connecting

member (22). Krivec does not disclose that each of the first and second connecting members is configured to be engageable with either the first wall or the second wall. None of Krivec's connecting members (22) have projections which extend in an aperture of a wall (14) (Figure 7).

Furthermore, none of Krivec's cabinet-side members (24) is reversible. Each member (24) is limited to use with only one side wall (14). As shown in Krivec's Figure 1, openings (166C) are at the rear end of both side walls (14). Thus, Krivec's member (24) is not configured to be engageable with either side wall. Thus, Krivec's cabinet-side members (24) cannot constitute the recited connecting members. Krivec cannot anticipate the claim.

#### **Claim 30**

Claim 30 depends from claim 41. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose a series of openings, wherein the openings are vertically spaced on each side wall, and wherein a finger portion is releasably engageable in each of the openings. In an example of a disclosed embodiment, Figures 56, 57, and 59 show a series of vertically spaced openings (562), wherein a finger portion (570) is releasably engageable in each of the openings. Krivec does not anticipate the claim.

#### **Claim 31**

Claim 31 depends from claim 30. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose a tab portion adjacent each longitudinal end (claim 41). Krivec also does not disclose a finger portion adjacent each longitudinal end (claim 31). Thus, Krivec cannot anticipate the claim.

### **Claim 32**

Claim 32 depends from claim 30. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose the recited structural arrangement of openings in a cabinet wall. Nor does Krivec disclose the openings having a size to receive a finger portion of a bracket. It follows that Krivec cannot anticipate the claim.

### **Claim 33**

Claim 33 depends from claim 30. The Action is silent as to where Krivec teaches the recited features. Krivec does not disclose a first series of openings, wherein the openings are vertically spaced on each side wall, and wherein the openings are capable of having a finger portion engageable therein (claim 30). Nor does Krivec disclose a second series of openings, wherein the openings are vertically spaced on each side wall, and wherein a tab portion is releasably engageable in each of the openings (claim 33). Thus, Krivec cannot anticipate the claim.

### **Claim 34**

Claim 34 depends from claim 33. Krivec does not disclose a second series of openings including in each side wall, one row of vertically spaced openings and a second row of vertically spaced openings, wherein the openings in the first row are horizontally disposed from the openings in the second row. Krivec does not disclose the recited first and second series of openings. It follows that Krivec cannot anticipate the claim.

**Claim 35**

Claim 35 depends from claim 34. Krivec does not disclose the recited structural arrangement of openings in a cabinet wall. Nor does Krivec disclose the openings having a size to receive a tab portion of a bracket. It follows that Krivec cannot anticipate the claim.

**Claim 36**

Claim 36 depends from claim 41. Krivec does not disclose a cabinet including an outer wall. Nor does Krivec disclose that a finger portion extends in the space between a side wall and the outer wall.

As previously discussed, the Action (on page 8) apparently alleges that a wall of a room constitutes the recited outer wall. However, the Action itself admits that Krivec would not work if the cabinet was flush with the room wall. Thus, a room wall cannot constitute the outer wall. Furthermore, the claim recites that it is the cabinet that "includes" the outer wall. Thus, Krivec does not disclose the recited outer wall. Nor does Krivec anticipate the claim.

**Claim 42**

Claim 42 depends from claim 41. The Action is silent as to where Krivec teaches the recited features. As previously discussed, Krivec does not disclose the recited tab portions and finger portion projections. Nor does Krivec disclose that a second (finger portion projection elongated outer edge) distance is greater than a first (tab portion elongated outer edge) distance. It follows that Krivec cannot anticipate the claim.

**Claim 43**

Claim 43 depends from claim 42. Krivec does not disclose that a second (finger portion projection elongated outer edge) distance is greater than a first (tab portion elongated outer edge) distance (claim 42). Krivec also does not disclose that a fourth (finger portion extending from a bracket edge) distance is greater than a third (tab portion extending from a bracket side) distance (claim 43). It follows that Krivec cannot anticipate the claim.

**Claim 45**

Claim 45 depends from claim 44. Krivec does not disclose that the apertures in each first pair are disposed from and aligned with one another in a horizontal direction (claim 44). Krivec also does not disclose that each of the apertures in each first pair is elongated in the horizontal direction (claim 45). Krivec's apertures (166C) are not of a pair where the paired apertures are disposed from and aligned with one another in a horizontal direction, and where each of the apertures in the pair is elongated in the horizontal direction. Where does Krivec teach a pair of horizontally elongated apertures that are also disposed from and aligned with one another in a horizontal direction? Thus, Krivec cannot anticipate the claim.

**Claim 46**

Claim 46 depends from claim 44. Krivec does not disclose that the apertures in each second pair are disposed from and aligned with one another in a horizontal direction (claim 44) in the manner recited. It follows that Krivec also does not disclose that each of the apertures in each second pair is vertically elongated. Thus, Krivec cannot anticipate the claim.

**Claim 47**

Claim 47 depends from claim 45. As previously discussed, Krivec does not teach a pair of horizontally elongated apertures that are also disposed from and aligned with one another in a horizontal direction (claim 45). It follows that Krivec also does not disclose that each of the apertures in each second pair is vertically elongated. Thus, Krivec cannot anticipate the claim.

**Claim 48**

Claim 48 depends from claim 44. The Action is silent as to where Krivec teaches a pair of slides. Nor does Krivec teach a pair of slides in the manner recited. In an example of a disclosed embodiment, Figure 56 shows a slide (574).

**Claim 54**

Claim 54 depends from claim 53. As previously discussed, Krivec does not teach the recited features of claim 53. It follows that Krivec also does not disclose that each side wall set is vertically disposed from and parallel to at least one other side wall set. Thus, Krivec cannot anticipate the claim.

**Claim 55**

Claim 55 depends from claim 54. Krivec does not teach that each set comprises a pair of apertures, and a pair of projections is engaged in the pair of apertures in the manner recited. Hence, Krivec does not anticipate the claim.

**Claim 56**

Claim 56 depends from claim 54. Krivec does not teach a set including a first pair of apertures and a second pair of apertures. Krivec does not teach a first pair of horizontally

elongated apertures that are also disposed from and aligned with one another in a horizontal direction (claim 45). It follows that Krivec also does not disclose that each of the apertures in each second pair is vertically elongated. Thus, Krivec cannot anticipate the claim.

**(iv) 35 U.S.C. § 103**

For brevity the Appellant has not necessarily presented all the reasons as to why the applied references do not render the claims obvious. Nevertheless, Appellant's arguments show that the applied references, taken alone or in combination, neither disclose nor suggest all of the features and relationships in the manner recited in the claims. Therefore, the applied references cannot render the claims obvious. Hence, Appellant's claims patentably distinguish over the applied reference. Thus, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejections should be withdrawn.

Again, Appellant's arguments against the prior art rejections are based on the Office's interpretation of the reference(s) as indicated and applied in the Action. Therefore, it is respectfully submitted that any other interpretation of the reference(s) by the Office would constitute a new ground of rejection.

Appellant respectfully submits that neither Krivec nor any of the other references taken alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims. Furthermore, even if it were somehow possible for a reference to have disclosed certain features as alleged, it would still not have been obvious to have combined features of the references as alleged. Additionally, even if it were somehow possible for the

references to be combined as alleged, the combined references still would not have produced Appellant's claimed invention.

All of the 35 U.S.C. § 103(a) rejections rely on Krivec to teach (anticipate) the features and relationships of independent claims. However, as previously discussed, Krivec fails to disclose or suggest these claims. It follows that Krivec cannot alleviate the deficiencies of any of the other references. That is, because the 35 U.S.C. § 103(a) rejections rely on a faulty assertion of Krivec they are also without merit. Thus, it would not have been obvious to have modified or combined the references so as to have produced Appellant's claimed invention.

The Action does not state in any way that is reasonably understandable by Appellant, where the specific features recited in Appellant's claims are allegedly found in the references. Not one rejection based on prior art has specifically and understandably labeled the claimed features allegedly found in each applied reference. Nor is there any citation to any alleged teaching, suggestion, or motivation to combine features of the prior art to produce the invention as claimed by Appellant. Furthermore, it is respectfully submitted that the Action is not in compliance with MPEP 707.07(d) which clearly states "where a claim is refused for any reason relating to the merits thereof it should be rejected and the ground of rejection fully and clearly stated." The Action's failure to specifically indicate the presence of the recited claim features in the references constitutes Agency Action under the Administrative Procedures Act admitting that the references do not meet the recited claim features. For this reason it is respectfully submitted that the Action fails to establish a *prima facie* case of obviousness against any of the claims and the rejections should be withdrawn.

Because the Action fails to directly apply the references to the claims, Appellant has been unduly burdened by having to speculate as to possible rationales for the rejections. Appellant has reviewed the references cited and has determined for the reasons stated herein that the cited references, taken individually or as a whole, clearly do not teach or suggest the invention recited in Appellant's claims. Therefore, the presented claims would not have been obvious to one having ordinary skill in the art.

Additionally, the attempts to modify each of the primary references are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, 22 USPQ2d 1780 (Fed. Cir. 1992). The rejections, which lack the necessary evidence and rationale, are based on knowledge gleaned only from Appellant's disclosure. It follows that it would not have been obvious to have combined the references in the manner alleged. Furthermore, without a motivation to combine, which is the current situation, a rejection based on a *prima facie* case of obviousness is improper (MPEP § 2143.01). Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

The applied reference(s), taken alone or in combination, neither disclose nor suggest the recited features and relationships. Thus, it would not have been obvious to one having ordinary skill in the art to have combined the reference(s) to have produced the recited invention. The Office does not factually support any *prima facie* conclusion of obviousness. If the Office does not produce a *prima facie* case, then the Appellant is under no obligation to submit evidence of

nonobviousness (MPEP § 2142). Appellant respectfully submits that such is the current situation. Therefore, the rejections are improper and should be withdrawn.

**The Pending Claims Are Not Obvious Over  
Krivec**

Claim 13 was rejected under 35 U.S.C. § 103(a) as obvious over Krivec. This rejection is respectfully traversed.

**Claim 13**

Claim 13 depends from claim 9. Krivec does not disclose or suggest the features and relationships that are specifically recited in the claim. Krivec does not disclose that a second vertical distance (related to the spacing of the first and second arrangements of apertures) is smaller than a first vertical distance (related to the spacing of item supporting members). In an example of a disclosed embodiment, Figures 57 and 62-63 show arrangements of apertures (Figure 57) spaced smaller than spacing of item supporting members (e.g., drawers; Figures 62-63).

The Action admits that Krivec does not disclose different vertical spacings. Nor does the Action provide any prior art teaching concerning the admittedly absent different vertical spacings. Nor does the Action provide any teaching, suggestion, or motivation in the prior art for combining features of the Krivec reference so as to produce Appellant's invention. Therefore, even if it were somehow possible to modify the Krivec reference (which it isn't) this would not render the resultant modification obvious because the prior art does not suggest the desirability of

the modification (MPEP § 2143.01). In conclusion, the Office has not presented a *prima facie* showing of obviousness. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection should be withdrawn.

**The Pending Claims Are Not Obvious Over  
Lipps in view of Krivec**

In the Action claims 20-28 and 37-39 were rejected pursuant to 35 U.S.C. § 103(a) as being unpatentable over Lipps in view of Krivec. Appellant traverses these rejections on the grounds that Appellant's claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion, or motivation cited so as to produce Appellant's invention. The features recited in Appellant's claims patentably distinguish over the applied references.

The Action (on page 15) alleges that Lipps discloses a cabinet. The Action admits that Lipps does not disclose the features of claims 1-19. The Action alleges that Krivec discloses a cabinet, and that it would have been obvious to have used the cabinet configuration of Krivec in the cabinet of Lipps. The Action alleges motivation for combining to "provide an interlock apparatus."

The Appellant disagrees. As previously discussed, Krivec fails to disclose or suggest claims 1-19 (or claim 41). It follows that Krivec cannot be used to alleviate the admitted deficiencies in the Lipps reference. That is, even if it were somehow possible for Lipps to have

been modified by Krivec (which it isn't), the resultant combination still would not have produced the claimed invention.

Furthermore, it would not have been obvious to have modified Lipps as alleged. There is no evidence that Lipps could be modified in the manner alleged. Nor are the structures of Lipps and Krivec compatible. Lipps desires that the doors and sides of the cabinet remain transparent (col. 3, lines 19-23). Furthermore, the shelves (20) of Lipps appear to be supported in columns (18) at corner frameworks (Figure 1). Therefore, Lipps' shelves (20) are not supported at a side wall. Nor is there any desire or need to support the shelves (20) at a side wall. It follows that it would not have been obvious to have placed the interlock members (148) of Krivec (Figure 7) through a transparent wall of Lipps. Furthermore, even if it were somehow possible to place the interlock members of Krivec into Lipps, a first wall side interlock member would interfere with a second wall side interlock member when both are placed through the same wall of Lipps.

Therefore, the alleged modification to Lipps would destroy the disclosed and desired utility or operability of the Lipps teaching. That is, the alleged modification to Lipps would render the reference inoperable for its intended purpose.

An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the prior art references. Note *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988). Therefore, it would not have been obvious to have modified Lipps to have produced Appellant's recited invention. Thus, the Office has not presented a *prima facie* showing of obviousness.

The Action (on page 15) also alleges, regarding the rejection of claims 20-28, that one "skilled in the art is capable of and would find it necessary to perform the method as described."

The Appellant disagrees. It is unclear as to why one skilled in the art would find it "necessary" to perform the methods of claims 20-28. Nor has the Action provided any valid rationale.

Additionally, as previously discussed, Krivec does not have a "releasable" connecting member, especially in light of Krivec's desire to "prevent disengagement" by using a fastening screw (72). Therefore, Krivec cannot be relied upon to teach or suggest removing a connecting member from a wall. For example, note claims 21-28.

Furthermore, the Action's (page 15, last line) apparent reliance on and application of the unknown (not of record) reference to Colson, Jr. et al. is unclear. Thus, the Action is confusing, indefinite, and defective.

Any attempt to have combined Lipps with Krivec is clearly an attempt at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible. The rejection, which lacks the necessary evidence and rationale as previously discussed, is based on knowledge gleaned only from Appellant's disclosure. It follows that it would not have been obvious to one having ordinary skill in the art to have modified the Lipps reference in the manner alleged. It is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

#### **Claim 20**

Claim 20 depends from claim 19. The Action is silent as to where the applied references disclose or suggest the recited features and relationships. The Action (on page 15) merely

indicates that the rejection relies on using the cabinet configuration of Krivec in the alleged modification of Lipps. However, Krivec does not disclose or suggest the recited removing and installing steps of claim 20. Nor would a Lipps reference modified with the cabinet configuration teachings of Krivec have produced the recited steps. It follows that the applied references, taken alone or in combination, neither disclose nor suggest the recited features and relationships. The Office has not presented a *prima facie* showing of obviousness. Therefore, it would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

**Claim 21**

Claim 21 depends from claim 19. The Action is silent as to where the applied references disclose or suggest the recited features and relationships. Again, the rejection merely relies on using the cabinet configuration of Krivec in the alleged modification of Lipps. However, as previously discussed, Krivec does not have a "releasable" connecting member, especially in light of Krivec's desire to "prevent disengagement" by using a fastening screw (72). Therefore, Krivec cannot be relied upon to teach or suggest removing a connecting member from a wall. It follows that the applied references, taken alone or in combination, neither disclose nor suggest the recited features and relationships. Thus, the Office has not presented a *prima facie* showing of obviousness.

**Claim 22**

Claim 22 depends from claim 21. As previously discussed, Krivec cannot be relied upon to teach or suggest removing a connecting member from a wall (claim 21). Nor can Krivec be

relied upon to teach or suggest reinstalling a connecting member with a wall (claim 22). Again, the Office has not presented a *prima facie* showing of obviousness.

**Claim 23**

Claim 23 depends from claim 22 which depends from claim 21. As previously discussed, the applied references, taken alone or in combination, neither disclose nor suggest the recited features and relationships of claims 22 or 21. Additionally, none of the applied references teach or suggest reinstalling a connecting member with a different arrangement of apertures in a wall. Again, the Office has not presented a *prima facie* showing of obviousness.

**Claim 24**

Claim 24 depends from claim 19. The Action is silent as to where the applied references disclose or suggest the recited features and relationships. The rejection merely relies on using the cabinet configuration of Krivec in the alleged modification of Lipps. However, as previously discussed, Krivec does not have a "releasable" connecting member, especially in light of Krivec's desire to "prevent disengagement" by using a fastening screw (72). Therefore, Krivec cannot be relied upon to teach or suggest removing a connecting member from a wall.

It follows that the applied references, taken alone or in combination, neither disclose nor suggest the recited features and relationships. The Office has not presented a *prima facie* showing of obviousness. It would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

### **Claim 25**

Claim 25 depends from claim 24. As previously discussed, the applied references cannot be relied upon to teach or suggest removing a connecting member from a wall (claim 24). It follows that the applied references cannot be relied upon to teach or suggest the placing of medical items. Thus, it would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

### **Claim 26**

Claim 26 depends from claim 24. As previously discussed, the applied references cannot be relied upon to teach or suggest removing a connecting member from a wall (claim 24). It follows that the applied references cannot be relied upon to teach or suggest installing a locking mechanism in the manner recited. That is, it would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

### **Claim 27**

Claim 27 depends from claim 26. Neither of the applied references, taken alone or in combination, disclose nor suggest removing a locking mechanism. The Office has not presented a *prima facie* showing of obviousness.

### **Claim 28**

Claim 28 depends from claim 26. Neither of the applied references, taken alone or in combination, disclose nor suggest relating a pre-determined input to causing a locking mechanism to provide access to a selected first medical item in the manner recited. The Office has not presented a *prima facie* showing of obviousness.

**Claim 37**

Claim 37 depends from claim 41. Neither of the applied references, taken alone or in combination, disclose nor suggest the recited features of claim 41. For example, as previously discussed, Krivec does not disclose or suggest each bracket including a tab portion adjacent each longitudinal end, and finger portions adjacent an edge (claim 41). Lipps also lacks the recited features. It follows that neither of the applied references, taken alone or in combination, can disclose or suggest that a door is moveably mounted in supporting connection with a cabinet in the manner recited in claim 37. Thus, it would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

**Claim 38**

Claim 38 depends from claim 37. Neither of the applied references, taken alone or in combination, disclose or suggest a lock module in the manner recited. It would not have been obvious to one having ordinary skill in the art to have combined the references. Nor would the combined references have produced the claimed invention.

**Claim 39**

Claim 39 depends from claim 38. Neither of the applied references disclose or suggest a computer operative responsive to authorized inputs to cause the condition of a lock module to change. The alleged lock (58) in Lipps is a key lock (col. 4, lines 11-12; col. 6, lines 39-42). Thus, the Office has not presented a *prima facie* showing of obviousness.

**The pending claims are not obvious (under the judicially created doctrine of obviousness-type double patenting) over any of the applied primary U.S. Patents in view of Lipps and further in view of Krivec**

Claims 1-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of (any one of nine) respective U.S. Patents in view of Lipps and further in view of Krivec. Appellant traverses all of these rejections.

First, the Action apparently relies on each of the primary references to disclose either "a computer system for a medical cabinet having drawers" or "a computer system for a medical storage area." As discussed in more detail herein, Appellant traverses the rejections based on the alleged teachings of each of the primary references. Nevertheless, only Appellant's claim 39 recites a "computer." Thus, even if it were somehow possible for each of the primary references to properly teach a "computer", then their application to Appellant's claims would be limited to claim 39.

As previously discussed, Krivec fails to disclose or suggest the recited features and relationships for which it is relied upon. Nor does Lipps disclose or suggest these recited features and relationships. Each of the obviousness type double patenting rejections relies on the alleged (but absent) features and relationships in Krivec (and Lipps). Therefore, even if it were somehow possible for Lipps to have been modified by Krivec (which it isn't), the resultant combination (of Lipps and Krivec) still would not have produced the relied upon features and

relationships, as previously discussed. It follows that the resultant combination could not have alleviated the deficiencies of each of the nine primary (U.S. patent) references.

Furthermore, the alleged modification to the primary reference in each of the alleged obviousness type double patenting rejections would destroy the disclosed and desired utility or operability or advantage of the primary reference teaching (as claimed). *In re Fine, supra*. Thus, the rejections are improper and should be withdrawn.

Additionally, any attempt to have used Lipps and Krivec "in order to obtain the apparatus as described in claims 1-56" (Action pages 16-20) is clearly an attempt at hindsight reconstruction of Appellant's claimed invention. The rejections, which lack the necessary evidence and rationale, are based on knowledge gleaned only from Appellant's disclosure. Such application is impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, 22 USPQ2d 1780 (Fed. Cir. 1992). It follows that it would not have been obvious to have modified any of the primary (U.S. patent) references in the manner alleged. It is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

Appellant submits that the Action also does not comply with the rules of the Patent Office. MPEP § 804II.B.1 provides that "any analysis employed in an obvious-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. § 103 obviousness determination." Additionally, "Office policy is to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. § 103" (MPEP § 2141; version August 2001; page 2100-113). The Action has not properly conducted a *Graham v. John Deere Co.* analysis. For example, the Action fails to ascertain the differences between the prior patent

claims and the claims in issue. None of the alleged obviousness type double patenting rejections indicate which recited features the primary reference is lacking. Nor does the Action provide any explanation as to how the primary references would be modified. Nor does the Action identify a source of any teaching, suggestion, or motivation in the prior art "to have altered the apparatus" in the claims of the primary references to have produced the invention as claimed by Appellant. MPEP § 706.02(j).

Additionally, the Action states to "See suggestions/motivations above" (involving Lipps and Krivec) but there are none to be found. Also, several of the rejections rely on Hingham et al. in view of Krivec. In these rejections the Action indicates that "Hingham et al (sic) and Krivec disclose the device as described above" and that it would have been obvious to have altered the primary reference "by employing the features of the device described by Hingham et al (sic) and Krivec, as described above." However, in none of these rejections is Hingham et al (sic) and Krivec described above (i.e., previously described). Thus, each of the alleged obviousness type double patenting rejections is unclear, incomplete, incomprehensible, and lacking. Thus, the Action is defective. On this basis it is respectfully submitted that each of the obviousness type double patenting rejections should be withdrawn. Nevertheless, even though the Action is defective, the Appellant, as the Action is best understood, has attempted to fully respond.

Because the Action has not properly conducted a *Graham v. John Deere Co.* analysis, and it has not met the criteria for a *prima facie* case of obviousness, it follows that no *prima facie* case of obviousness has been presented. If the Office does not produce a *prima facie* case, then the Appellant is under no obligation to submit evidence of nonobviousness (MPEP § 2142;

version August 2001; page 2100-121). That is, the Appellant is under no obligation to reply to the alleged obviousness type double patenting rejections. Furthermore, any reply would be based on pure speculation since the rejections lack the basic necessary details for a proper obviousness-type rejection to enable a proper rebuttal.

Because the Action fails to directly apply the references to the claims in the alleged obviousness type double patenting rejections, Appellant has been unduly burdened by the Office's attempt to force Appellant to speculate as to possible rationales for the rejections. However, the Patent Office bears the burden of citing and applying prior art in a clear manner to support any rejections made. Thus, the Action's failure to clearly identify on the record the allegedly recited features and suggestions in the applied references has been taken as an admission by the Office that the applied references do not disclose nor suggest the recited features.

Furthermore, Appellant refuses to speculate how, if at all, the applied primary U.S. patent references relate to Appellant's claims 1-56. The Action is silent concerning any discussion of the primary references in regard to the claims 1-56. Appellant further respectfully requests that the rejections be withdrawn on this basis.

Furthermore, the entire disclosures of these U.S. patents may not be used as prior art, which the Action apparently attempts to do. Any availability of these patents for making an obviousness-type double patenting rejection is limited to the claimed subject matter. There is no evidence of record showing that the applied primary references even have the relied upon subject

matter in their claims. To construe the intended application of these applied primary references would be pure speculation, of which Appellant refuses to partake.

Where is "a computer system for a medical cabinet having drawers" or "a computer system for a medical storage area" in the relied upon claims of each of the relied upon primary references? Furthermore, in an example showing of the impropriety of all of the rejections, where is a "computer" even mentioned in claim 1 of U.S. patent 5,961,036? Appellant also asserts that many of the applied primary references are directed to method claims, whereas each of Appellant's independent claims are directed to an apparatus. As previously discussed, the Office has improperly relied on the entire disclosures of these U.S. patents instead of only their claimed subject matter. Furthermore, as previously discussed, only Appellant's claim 39 recites a "computer." Thus, Appellant further respectfully requests that the rejections be withdrawn on these basis.

As previously discussed, the Action is silent concerning any discussion of the applied primary references in regard to Appellant's claims 1-56. Thus, Appellant respectfully submits that the Office has not "fully and clearly stated" the rejection as is required by MPEP 707.07(d). Nor did the Office "properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply" in accordance with MPEP 706.02(j). Additionally, 37 C.F.R. § 1.104 (c) (2), regarding references, requires that "the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained." Additionally, to support a conclusion of obviousness, a convincing line of reasoning must be presented. MPEP 706.02(j). However,

Appellant respectfully submits that no line of reasoning has been presented, let alone a convincing line of reasoning. Furthermore, because the basis for the rejections have not been properly communicated, Appellant has not been given a fair opportunity to properly reply. That is, Appellant has been left with the burden of trying to properly respond to the unclear, incomplete, and defective obviousness-type double patenting rejections.

The Action does not state in any way that is reasonably understandable by Appellant, where the specific features recited in Appellant's claims 1-56 are allegedly found in the applied art. Again, for these reasons it is respectfully submitted that the Action fails to establish a *prima facie* case of obviousness against the subject matter claimed Appellant's claims 1-56 and the rejections should be withdrawn.

Nevertheless, Appellant has reviewed the references cited and has determined that these references, either taken individually or in combination, clearly do not teach nor suggest the features and relationships recited in Appellant's claims. Therefore, the claims directed to the present invention would not have been obvious to one having ordinary skill in the art.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion, or motivation cited for combining features of the cited references so as to produce Appellant's invention, it is respectfully submitted that the claims are allowable for these reasons. The Action fails to establish a *prima facie* case of obviousness against any of the claims. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

### **Additional Comments**

It is noted that claims 49-52 were not rejected under 35 U.S.C. § 102(b) as being anticipated by Krivec nor rejected pursuant to 35 U.S.C. § 103(a) as being unpatentable over Lipps in view of Krivec. It is therefore presumed that all these claims would be allowable but for the alleged obviousness-type double patenting rejection, which may be overcome by filing a terminal disclaimer.

### **CONCLUSION**

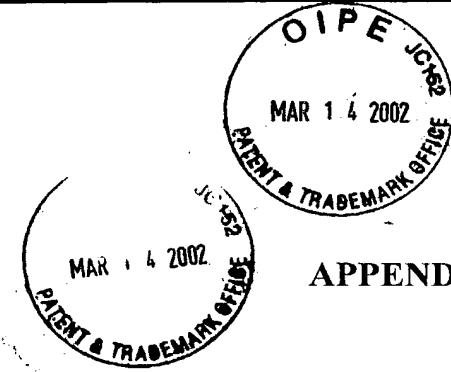
Each of Appellant's claims satisfy the requirements of 35 U.S.C. § 112. Also, as explained above, each of the pending claims specifically recites features and relationships that are neither disclosed nor suggested in any of the applied art. Furthermore, the applied art is devoid of any such teaching, suggestion, or motivation for combining features of the applied art so as to produce Appellant's invention. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,



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## APPENDIX

### CLAIMS

1. An apparatus comprising:

a supporting structure including a generally vertically extending wall, the wall including at least two sets of generally horizontally disposed apertures therein, wherein each set of apertures includes a first aperture and a second aperture, wherein the first aperture is disposed vertically above the second aperture; and

a releasable connecting member, wherein the connecting member in an operative position extends substantially between the sets of apertures and in releasable supporting connection with the wall, wherein the releasable connecting member is adapted for supporting items in operative connection therewith, wherein the releasable connecting member includes two disposed pairs of projecting portions corresponding to the sets of apertures, and wherein each pair of projecting portions includes a first projection and a second projection, and wherein in the operative position of the connecting member the first projection extends in a first aperture and the second projection extends in a second aperture, and wherein in cross section the second projection extends from the connecting member in generally a first direction, and wherein the first projection includes an inner portion, wherein the inner portion extends from the connecting member in generally the first direction, and wherein the first projection includes an end portion,

wherein the end portion extends generally transverse to the first direction and away from the second projection, and wherein the connecting member is placed in supporting connection with the wall by extending the end portions of the first projections in the first apertures of the sets and then rotating the connecting member relative to the wall to the operative position wherein the inner portions extend in the first apertures and the second projections extend in the second apertures.

2. The apparatus according to claim 40 wherein the releasable connecting member comprises a body and wherein the first projection extends from the body, and wherein in the operative position of the connecting member the end portion and the body extend on opposed sides of the vertically extending wall.
3. The apparatus according to claim 2 and further comprising an outer wall extending generally parallel to and in operatively fixed connection with the vertically extending wall, wherein a space extends between the vertically extending wall and the outer wall and wherein in the operative position of the connecting member the end portion extends in the space.
4. The apparatus according to claim 40 wherein a horizontally disposed pair of sets of apertures comprise an arrangement, and wherein the vertically extending wall comprises a plurality of vertically disposed arrangements of apertures, wherein the connecting member is positionable to engage any one of the arrangements of apertures in the operative position,

whereby the connecting member is selectively vertically positionable relative to the vertically extending wall.

5. The apparatus according to claim 40 and further comprising a moveable item supporting member in operative supporting connection with the connecting member, wherein in the operative position of the connecting member the item supporting member is moveable relative to the wall.

6. The apparatus according to claim 5 wherein the item supporting member is moveable relative to the vertically extending wall in a generally horizontal direction.

7. The apparatus according to claim 4 wherein the vertically extending wall comprises a first wall with first arrangements of apertures therein, wherein the connecting member comprises a first connecting member, and further comprising:

a second wall, wherein the second wall is generally vertically extending and horizontally disposed from the first wall, wherein the second wall comprises a plurality of second arrangements of apertures therein, wherein each respective second arrangement generally corresponds vertically to a respective first arrangement,

a second connecting member, wherein the first connecting member is in operative connection with one of the first arrangements of apertures and the second connecting member is in operative connection with one of the second arrangements of apertures, and

an item supporting member in supporting connection with the first and second connecting members.

8. The apparatus according to claim 7 wherein the item supporting member is moveably mounted in supporting connection with the first and second connecting members, wherein the supporting member is generally moveable horizontally relative to the first and second walls.

9. The apparatus according to claim 8 and further comprising:

a plurality of first and second connecting members, each connecting member in supporting connection with the first and second walls respectively;

a plurality of item supporting members, each item supporting member independently moveably mounted in supporting connection with one first supporting member and one second supporting member.

10. The apparatus according to claim 8 wherein the item supporting member comprises a drawer.

11. The apparatus according to claim 8 wherein the item supporting member comprises a shelf.

12. The apparatus according to claim 9 wherein the item supporting members are vertically spaced from one another by a first vertical distance, and wherein the first and second arrangements of apertures are spaced from one another by generally the first vertical distance.

13. The apparatus according to claim 9 wherein the item supporting members are spaced from one another by a first vertical distance, and wherein the first and second arrangements of apertures are spaced from one another by a second vertical distance, wherein the second vertical distance is smaller than the first vertical distance.

14. The apparatus according to claim 40 wherein at least one first aperture in a set is elongated generally horizontally, and wherein a first projection is elongated in a direction generally parallel to the first direction such that in the operative position of the connecting member the elongated first projection extends into and substantially fills the generally horizontally elongated first aperture.

15. The apparatus according to claim 40 wherein at least one second aperture in a set is elongated generally vertically, and wherein in the operative position of the connecting member a second projection extends in and substantially fills the vertically elongated aperture.
16. The apparatus according to claim 40 wherein the first aperture in each of the sets is elongated generally horizontally and the second aperture in each of the sets is elongated generally vertically, and wherein the projections are configured such that the first projections extend in and substantially fill the first apertures and the second projections extend in and substantially fill the second apertures.
17. The apparatus according to claim 40 wherein in each of the sets of apertures the second aperture is disposed horizontally from the first aperture.
18. The apparatus according to claim 17 wherein the second apertures in the pair of sets are spaced further apart horizontally than the first apertures in the pair of sets.
19. The apparatus according to claim 7 and further comprising a plurality of first connecting members in supporting connection with the first wall, and a plurality of second connecting members in supporting connection with the second wall, wherein each of the first and second connecting members is configured to be engageable in the operative position with either the first wall or the second wall, and further comprising a plurality of item supporting members, wherein

each item supporting member is in operative supporting connection with at least one first connecting member and at least one second connecting member.

20. A method comprising:

a) removing from the apparatus recited in claim 19 at least one item supporting member from supporting connection with the respective first and second connecting members;

and

b) installing in supporting connection with the first and second connecting members another item supporting member.

21. A method comprising:

a) removing from the apparatus recited in claim 19 at least one item supporting member from supporting connection with the respective first and second connecting members;

and

b) removing the first and second connecting members that corresponded to the removed item supporting member in an operative supporting connection from the first and second walls respectively.

22. The method according to claim 21 and further comprising the steps of:

c) reinstalling the removed first connecting member in supporting connection with one of the first or second walls, and reinstalling the removed second connecting member in supporting connection with the other of the first or second walls;

d) installing an item supporting member in supporting connection with the reinstalled first and second connecting members.

23. The method according to claim 22 wherein in step (b) the first connecting member is disengaged from an arrangement of apertures in the first wall, and wherein in step (c) one of the connecting members is engaged with a different arrangement of apertures in the first wall.

24. A method comprising:

a) removing from the apparatus recited in claim 19 the plurality of item supporting members;

- b) removing the plurality of first and second connecting members from supporting connection with the first and second walls;
- c) installing a plurality of first and second connecting members in supporting connection with the first and second walls respectively;
- d) installing a plurality of item supporting members in supporting connection with the first and second connecting members installed in step (c).

25. The method according to claim 24 and further comprising the step of:

- e) placing a plurality of medical items in supporting connection with each of the item supporting members.

26. The method recited in claim 24 wherein the item supporting members are supported in an enclosure, the enclosure including the first and second walls, and further comprising the step of:

- e) installing in connection with the enclosure at least one locking mechanism to restrict access to the plurality of item supporting members installed in step (d).

27. The method according to claim 26 and prior to step (e) further comprising the step of removing from supporting connection with the enclosure at least one locking mechanism for restricting access to at least one of the item supporting members removed in step (a).

28. The method according to claim 26 comprising a plurality of first medical items, and further comprising the steps of:

f) placing in supporting connection with each respective item supporting member at least one respective first medical item;

g) providing access to a selected first medical item responsive to at least one pre-determined input to a user interface, wherein input of the pre-determined input is operative to cause the locking mechanism to provide access to the selected first medical item.

29. An apparatus comprising:

a pair of drawer guides constructed to support a drawer and allow the drawer to move forward and backward in supporting connection therewith;

a pair of brackets wherein each drawer guide is in operatively fixed connection with a corresponding of one of said brackets, wherein each bracket includes a substantially flat

elongated member having a tab portion adjacent each longitudinal end, the tab portions extending in a first direction, wherein the elongated member further includes a finger portion adjacent an upper edge thereof, wherein the finger portion extends generally transverse to the first direction;

a plurality of walls defining a cabinet, the walls including a top, back, bottom and a pair of disposed side walls, each of the side walls having a plurality of openings therein, the plurality of openings having a pre-determined spacing and being configured to receive in releasibly engaging relation the finger portions and the tab portions of the brackets, wherein the openings in the side walls are generally horizontally aligned and vertically spaced wherein the drawer guides are selectively and vertically positionable in the cabinet.

30. The apparatus according to claim 41 wherein the plurality of openings comprise a first series of openings, wherein the openings in the first series of openings are vertically spaced on each side wall, and wherein a finger portion is releasibly engageable in each of the openings in the first series.

31. The apparatus according to claim 30 wherein each bracket includes a finger portion adjacent each longitudinal end, and wherein the first series of openings include in each side wall one row of vertically spaced openings and a second row of vertically spaced openings, wherein the openings in the second row are horizontally disposed from the openings in the first row.

32. The apparatus according to claim 30 wherein each of the openings in the first series of openings has a size to receive a finger portion.
33. The apparatus according to claim 30 wherein the plurality of openings further comprises a second series of openings in each side wall, wherein each of the openings in the second series of openings are vertically spaced on each side wall, wherein a tab portion is releasably engageable in each of the openings in the second series.
34. The apparatus according to claim 33 wherein the second series of openings includes in each side wall, one row of vertically spaced openings and a second row of vertically spaced openings, wherein the openings in the first row are horizontally disposed from the openings in the second row.
35. The apparatus according to claim 34 wherein each of the openings in the second series of openings has a size to receive a tab portion.
36. The apparatus according to claim 41 wherein the cabinet includes at least one outer wall, wherein the outer wall is outwardly disposed from at least one of the side walls, and wherein a space extends between the side wall and the outer wall, and wherein the finger portions extend in the space.

37. The apparatus according to claim 41 and further comprising a door, wherein the door is moveably mounted in supporting connection with the cabinet.

38. The apparatus according to claim 37 and further comprising a lock module in operative connection with the cabinet, wherein the lock module is selectively operative to change between a secured condition wherein the door is held in closing relation with the cabinet and an unsecured condition wherein the door is enabled to be opened.

39. The apparatus according to claim 38 and further comprising

at least one respective first medical item stored in the cabinet, a user input device in operative connection with the lock module and a computer in operative connection with the user input device,

the computer in operative connection with a data store,

wherein the data store includes data representative of a storage location within the cabinet, the first medical item stored in the storage location in the cabinet, and authorized inputs for enabling access to the first medical item,

and wherein the computer is operative responsive to authorized inputs to the user interface to cause the condition of the lock module to change to the unsecured condition, whereby a first medical item stored in the storage location may be accessed.

40. An apparatus comprising:

a supporting structure including a generally vertically extending wall, the wall including at least two sets of apertures,

wherein a pair of sets are disposed generally horizontally,

wherein each set includes a first aperture and a second aperture,

wherein each set includes the first aperture disposed vertically from the second aperture; and

a releasable connecting member,

wherein the connecting member in an operative position extends adjacent two sets of apertures and in releasable supporting connection with the wall,

wherein the connecting member is adapted for supporting items in operative connection therewith,

wherein the connecting member includes two disposed pairs of projecting portions,

wherein each pair of projecting portions includes a first projection and a second projection,

wherein in the operative position of the connecting member each respective first projection extends in a respective first aperture and each respective second projection extends in a respective second aperture,

wherein in cross section each second projection extends from the connecting member in generally a first direction,

wherein each first projection includes an inner portion,

wherein each inner portion extends from the connecting member in generally the first direction,

wherein each first projection includes an end portion,

wherein each end portion extends generally transverse to  
the first direction and away from the second projections,

wherein the connecting member is placed in supporting connection with  
the wall

by extending each respective end portion in a respective first  
aperture, whereby each respective inner portion extends in a  
respective first aperture,

and by extending each respective second projection in a respective  
second aperture to engage the connecting member with the wall.

41. An apparatus comprising:

a pair of drawer guides constructed to support a drawer and allow the drawer to  
move forward and backward in supporting connection therewith;

a pair of brackets,

wherein each drawer guide is in operatively fixed connection with a respective one of said brackets,

wherein each bracket includes a substantially flat elongated member having a tab portion adjacent each longitudinal end,

the tab portions extending in a first direction,

wherein the elongated member further includes finger portions adjacent an edge thereof,

wherein the finger portions each include a projection,

wherein the finger portion projections extend generally transverse to the first direction,

a plurality of walls defining a cabinet,

the walls including a top wall, a back wall, a bottom wall, and a pair of disposed side walls,

each of the side walls having a plurality of openings therein,

the plurality of openings having a pre-determined spacing  
and being configured to receive in releasably engaging  
relation the finger portions and the tab portions of the  
brackets,

wherein each opening is generally horizontally aligned with  
another opening and vertically spaced from another  
opening,

wherein the drawer guides are selectively and vertically positionable in the  
cabinet.

42. The apparatus according to claim 41 wherein the tab portions each include a first elongated outer edge having a first distance, wherein the finger portion projections each include a second elongated outer edge having a second distance, and wherein the second distance is greater than the first distance.

43. The apparatus according to claim 42 wherein the tab portions extend from a side of the bracket a third distance, wherein the finger portions extend from an edge of the bracket a fourth distance, wherein the fourth distance is greater than the third distance.
44. Apparatus comprising:

a cabinet adapted for housing medical items, the cabinet including an interior area bounded by a pair of opposed side walls, the side walls being disposed from one another in a first horizontal direction;

each side wall including therein a plurality of first pairs of apertures, the apertures in each first pair being disposed from and aligned with one another in a second horizontal direction perpendicular to the first horizontal direction, and a plurality of second pairs of apertures, the apertures in each second pair being disposed from and aligned with one another in the second horizontal direction, and wherein each aperture in each first pair is vertically disposed from and aligned with at least one aperture in another first pair, and wherein each aperture in each second pair is vertically disposed from and aligned with at least one aperture in another second pair;

a plurality of supports, each support releasably simultaneously engageable with at least one first pair aperture and at least one second pair aperture;

at least one medical item supporting structure removably supported and selectively vertically positionable in the interior area, wherein the at least one medical item supporting structure is in releasably supporting connection with both of the side walls through at least two of the supports.

45. The apparatus according to claim 44 wherein each of the apertures in each first pair is elongated in the second horizontal direction.
46. The apparatus according to claim 44 wherein each of the apertures in each second pair is vertically elongated.
47. The apparatus according to claim 45 wherein each of the apertures in each second pair is vertically elongated.
48. The apparatus according to claim 44 and further comprising a pair of slides, wherein the slides are disposed from one another in the first horizontal direction, and wherein a first medical item supporting structure is in supporting connection with the pair of slides, wherein the first medical item supporting structure is enabled to be extended from the interior area.

49. The apparatus according to claim 44 and further comprising a plurality of medical item supporting structures each of which plurality of medical item supporting structures is selectively vertically positionable in the interior area.
50. The apparatus according to claim 49 wherein the plurality of medical item supporting structures includes at least one drawer.
51. The apparatus according to claim 49 wherein the plurality of medical item supporting structures include at least one shelf.
52. The apparatus according to claim 50 wherein the plurality of medical item supporting structures include at least one shelf.
53. Apparatus comprising:

a cabinet adapted for housing medical items, the cabinet including an interior area bounded by a pair of disposed side walls, the side walls being disposed from one another in a first horizontal direction;

a plurality of medical item supporting structures releasibly supported and selectively vertically positionable in the interior area;

a plurality of interengaging apertures and projections, wherein one of either the apertures and projections is operatively fixed relative to and in supporting connection with the side walls, and the other of either the apertures and projections is operatively fixed relative to and in supporting connection with the supporting structures, and wherein each medical item supporting structure is releasably supported in the interior area in supporting connection with both of the side walls through engagement of a plurality of the projections and apertures.

54. The apparatus according to claim 53 wherein the plurality of the one of either the apertures and projections operatively fixed and in supporting connection with the side walls, are arranged in sets, wherein each set in supporting connection with one side wall is vertically disposed from and parallel to at least one other set in supporting connection with the one side wall.
55. The apparatus according to claim 54 wherein each set comprises at least one pair of apertures, and wherein at least one pair of projections in supporting connection with a supporting structure is engaged in the at least one pair of apertures to engage the supporting structure in supporting connection with the one side wall.
56. The apparatus according to claim 54 wherein each set includes a first pair of apertures and a second pair of apertures, the apertures in each first pair being disposed from and

aligned with one another in a second horizontal direction, the apertures in each second pair being disposed from and aligned with one another in a second horizontal direction, and wherein each aperture in each first pair is vertically disposed from and aligned with at least one aperture in another first pair, and wherein each aperture in each second pair is vertically disposed from and aligned with at least one aperture in another second pair, wherein each of the apertures in each first pair is horizontally elongated, and wherein each of the apertures in each second pair is vertically elongated.